


JAN 27 2006

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Albert W. Watkins

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January 27, 2006

Signature

Date

In re:

Serial #: 09/756,688
For: Removable Bearing Assemblies
Filed: January 9, 2001
Inventor: Richard L. Fisher
GAU: 3617
Examiner: Avila
Docket #: Fisher-001221

PETITION TO INVOKE THE SUPERVISORY AUTHORITY OF THE DIRECTOR UNDER
37 CFR 1.181 AND MPEP 1002.02(e) TO REVIEW THE EXAMINER'S REFUSAL TO
INITIATE AN INTERFERENCE

The present petition seeks to invoke supervisory authority of the Director in accord with 37 CFR §1.181(c) regarding a request to institute an interference. A request for reconsideration of the decision not to institute was timely filed on September 14, 2005, and a decision denying the request for reconsideration was mailed by the Examiner December 22, 2005.

Claims 21, 23, 25, 26, 28-31, 39, 73 and 74 stand allowed. Claims 43, 47 and 50 stand objected to as being dependent upon a rejected base claim. Claims 40-42, 44-46, 48, 49, 51 and 52 rejected under 35 U.S.C. §102(b) as being clearly anticipated by Lovell, and form the subject of a separate appeal brief. In view of the following remarks, the Director is respectfully requested to reconsider the outstanding objections and rejections, and institute an interference proceeding with the Foreman patent regarding the claims that were copied from or rewritten in equivalent language from Foreman and that have been allowed, objected to, or rejected in the outstanding action.

The presently pending claims were either drafted directly from the Foreman patent, or were rewritten using a simple and direct substitution of the applicant's terminology for the terminology used by Foreman. The applicant has submitted a number of affidavits confirming the common meaning in the art of these terms. A number of these claims have been indicated by the Examiner

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as being patentable. Nevertheless, in the final paragraph of section 5 of the outstanding office action, beginning in the first line of page 3, the Examiner states: "Applicant further requests that an interference be instituted. **However, all of the claims need to be in allowable form for an interference.** The rejected claims need to be canceled or placed in condition for allowance for an interference to be instituted."

MPEP, section 2309.02, page 2300-23, a copy which is attached herewith, states in relevant part:

All claims in each party's application or patent must be listed in the spaces provided on the form as either corresponding or not corresponding to the count. A claim corresponds to a count if, considering the count as prior art, the claim would be unpatentable over the count under 35 U.S.C. 102 or 35 U.S.C. 103. If the examiner is in doubt as to whether a party's claim does or does not correspond to a count, it should be listed as corresponding to the count. If the party disagrees with this listing, a motion may be filed under 37 CFR 1.633(c)(4) during the interference to designate the claim as not corresponding to the count.

Note that for each count, every claim in a party's application or patent must be designated as either corresponding or not corresponding to the count; this includes any claims of the application which may be under rejection. For every claim of an application which is listed on the form, the examiner must indicate whether or not that claim is allowable by writing its number in either the "patented or patentable pending claims" box or the "unpatentable pending claims" box on the form. All patent claims and at least one of the application claims designated as corresponding to the count must be listed in the "patented or patentable pending claims" box.

According to this section of the MPEP, not all claims are required to be determined patentable by the patent examiner prior to instituting an interference. Instead, the Examiner is instructed to simply designate the counts and indicate which claims are believed to be patentable or unpatentable.

The Director is therefore respectfully requested to review the request and withdraw the present final rejection and institute an interference with the Foreman patent. Should there remain any open issues in this application which might be resolved by telephone, the Examiner is respectfully requested to call the undersigned at 320-363-7296 to further discuss the advancement of this application. The Commissioner is authorized to charge any small entity fees associated with this correspondence to deposit account 17-0155.

Sincerely,



Albert W. Watkins
reg. 31,676